

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTHONY BURRIOLA,

Petitioner,

vs.

MR. PALMER, et al.,

Respondents.

Case No. 3:10-CV-00357-LRH-(VPC)

ORDER

Petitioner, who is in the custody of the Nevada Department of Corrections, has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed in forma pauperis. The application is moot because petitioner has paid the filing fee. The court has reviewed the petition, and the court will refer this action to the United States Court of Appeals for the Ninth Circuit because the petition is successive.

Petitioner challenges the validity of the judgment of conviction in State v. Burriola, Case No. C143171, in the Eighth Judicial District Court of the State of Nevada. Petitioner was convicted of second-degree murder with the use of a deadly weapon. Petitioner challenged the same judgment of conviction in Burriola v. Palmer, Case No. 3:06-CV-00059-PMP-(RAM). The court dismissed that action because it was untimely pursuant to 28 U.S.C. § 2244(d). Petitioner appealed that dismissal. Both this court and the Court of Appeals for the Ninth Circuit denied a certificate of appealability. Petitioner then petitioned the Supreme Court of the United States for a writ of certiorari, and that was denied.

1 “[D]ismissal of a section 2254 habeas petition for failure to comply with the statute of
2 limitations renders subsequent petitions second or successive for purposes of . . . 28 U.S.C. §
3 2244(b).” McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009). Petitioner must first obtain
4 authorization from the court of appeals before this court can consider his petition. 28 U.S.C.
5 § 2244(b)(3).

6 IT IS THEREFORE ORDERED that the clerk of the court file the application to proceed in
7 forma pauperis.

8 IT IS FURTHER ORDERED that the application to proceed in forma pauperis is **DENIED**
9 as moot.

10 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto, Attorney
11 General for the State of Nevada, as counsel for respondents.

12 IT IS FURTHER ORDERED that the clerk shall electronically serve respondents with a
13 copy of the petition and a copy of this order. No response by respondents is necessary.

14 IT IS FURTHER ORDERED that, pursuant to Circuit Rule 22-3(a), the clerk of the court
15 shall refer this action to the United States Court of Appeals for the Ninth Circuit.

16 IT IS FURTHER ORDERED that the clerk of the court shall administratively close this
17 action.

18 DATED this 10th day of August, 2010.



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22 LARRY R. HICKS
23 UNITED STATES DISTRICT JUDGE
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